



**DEPARTMENT OF FAIR EMPLOYMENT  
AND HOUSING  
ENFORCEMENT DIVISION  
DIRECTIVE**

**DIRECTIVE NUMBER  
500**

**DISTRIBUTION DATE  
May 26, 2006**

1. **SUBJECT: CASE CLOSING CATEGORIES AND PROCEDURES**
2. **PURPOSE:** To set forth the procedures for identifying proper closing categories and closing procedures for employment, Ralph Civil Rights Act (Ralph) or Unruh Civil Rights Act (Unruh) cases.
3. **BACKGROUND:** When a Department of Fair Employment and Housing (DFEH) employment, Ralph or Unruh case is closed, it is assigned a closing category that denotes the rationale upon which the case is being closed (e.g., no jurisdiction, successful conciliation, etc.). The closing category is included in a computer-generated closing letter that is mailed to complainants and respondents. DFEH has identified specific pre-closure procedures related to each closing category. These closing categories and procedures are governed by the Fair Employment and Housing Act (FEHA) and the interagency agreement between DFEH and the U.S. Equal Employment Opportunity Commission (EEOC) as described below:
4. **PROCEDURES:**

**A. Case Closing Categories:**

**01 NO JURISDICTION**

The complaint is beyond DFEH's scope of authority as defined by the FEHA, Ralph or Unruh.

Closing Procedures:

- 1) A pre-closure letter from the consultant must be sent to the complainant indicating why DFEH lacks jurisdiction. The letter must be approved by the District Administrator prior to mailing.
- 2) The case may be closed as soon as the pre-closure letter is mailed.
- 3) A copy of DFEH-600-19 must accompany all cases closed with this category.

**02 COMPLAINT WITHDRAWN**

The complainant submits a written request to discontinue the investigation.

Closing Procedures:

- 1) A "Request to Discontinue Investigation of Complaint" (DFEH-600-06A [non-dual filed cases] or DFEH-600-06B [dual filed cases]) will be signed by the complainant. A written request signed by the complainant which includes DFEH and EEOC case numbers may be substituted in rare circumstances.
- 2) The case may be closed immediately upon receipt of the items referenced above.

**03 COMPLAINANT UNAVAILABLE**

Exhaustive attempts to contact the complainant have failed.

Closing Procedures:

- 1) The assigned consultant has diligently attempted to contact the complainant. All such efforts will be documented. Such efforts include:
  - a) Attempts to reach the complainant and complainant's contact person by telephone during business and non-business hours; **and**
  - b) Attempts to reach the complainant by mail. Dual filed cases require mailing the complainant a DFEH-200-25 or DFEH-200-45 along with the appropriate EEOC 30-day letter (DFEH-200-25N or DFEH-200-25S). Non-dual filed cases require mailing the complainant a DFEH-200-26 or DFEH-200-46. These letters must be sent by certified *and* regular mail and 30 days from the date of the letter must be allowed for response.
- 2) Caution must be exercised when sending DFEH-200-45 or the DFEH-200-46 to ensure that the complainant is not being required to provide evidence to which he/she would not be reasonably expected to have access.
- 3) A copy of the DFEH-600-21 must accompany all cases closed under this category.
- 4) The case must remain open for 30 days even if the certified letter is returned by the post office. This is to allow the

complainant adequate time to respond to the copy of the letter sent by regular mail.

**04 COMPLAINANT FAILED TO COOPERATE**

The complainant has failed to respond to DFEH letters and telephone calls.

Closing Procedures:

- 1) The assigned consultant has diligently attempted to obtain the complainant's cooperation and response and has documented such efforts which include:
  - a) Attempts to reach the complainant by telephone during business and non-business hours and the complainant does not return the calls; **and**
  - b) Attempts to reach the complainant by mail and the complainant has failed to respond to the requests set forth in the letter. Dual filed cases require mailing the complainant a DFEH-200-25 or DFEH-200-45 along with the appropriate EEOC 30-day letter (DFEH-200-25N or DFEH-200-25S). Non-dual filed cases require mailing the complainant a DFEH-200-26 or DFEH-200-46. Letters must be sent by both certified and regular mail. Thirty (30) days from the date of the letter must be allowed for a response.
- 2) This closing category will only be used when a signed certified receipt is returned by the post office or the letter sent by regular mail is not returned.
- 3) Caution must be exercised when sending the DFEH-200-45 or the DFEH-200-46 to ensure that the complainant is not being required to provide evidence to which he/she would not be reasonably expected to have access.
- 4) A copy of the DFEH-600-21 must accompany all cases closed under this category.
- 5) The case must remain open at least 30 days to allow the complainant adequate time to respond.

**05 INSUFFICIENT EVIDENCE  
TO PROVE A VIOLATION OF  
THE STATUTE**

A determination has been made that further investigation would not disclose a violation of the FEHA. The supervisor must concur with the determination.

Information from the respondent and feedback from the complainant, either after a review of the response or in the complainant's answer to the 30-day inquiry letter (DFEH-200-45 or DFEH-200-46), indicates that the allegations set forth in the complaint cannot be proven and that further investigation would not disclose a violation of the FEHA. Cases closed under this closing category must have 180 days or more remaining before the anniversary date.

Closing Procedures:

- 1) A 14-day pre-closure letter (either DFEH-200-12 or DFEH-200-14/DFEH-200-14S) will be prepared explaining why the case is being recommended for closure. Information provided in the letter must clearly demonstrate that all allegations in the complaint and all issues set forth in case analysis have been addressed.
- 2) The letter must be approved by the District Administrator prior to being mailed. The District Administrator will initial the file copy of the letter in the top right-hand corner signifying approval of the investigation and the letter and will note his/her review and approval on the Case Diary. The letter will be signed by the consultant.
- 3) The case will remain open for 14-days from the date of the letter to allow a response by the complainant.

**06 COMPLAINANT ELECTED  
COURT ACTION**

The complainant provides written notification of intention to litigate in court or copies of legal documents which show the discrimination issues raised in the complaint being litigated.

Closing Procedures:

- 1) Cases accepted for investigation require the completion of a "Request for Authorization to File a Lawsuit" (DFEH-600-09A [non-dual filed cases] or DFEH-600-09B [dual filed cases]) or a written request signed by the complainant which includes the DFEH and EEOC case numbers.

- 2) Cases where complainants wish an immediate "right-to-sue" letter and have not been interviewed require a completed DFEH-300-03. (Refer to Directive 234, "Notification of Right-to-Sue," for detailed procedures on processing such cases.)
- 3) Cases where the complainant has been interviewed and, after the case is accepted for investigation, he/she decides to elect court action, instead, will require a drafted complaint and a signed "Request for Authorization to File a Lawsuit" (DFEH-600-09A [non-dual filed cases] or DFEH-600-09B [dual filed cases]).
- 4) The case may be closed immediately upon receipt of the items referenced above.
- 5) For *non-dual filed cases*, a copy of legal documents that demonstrate that the allegations of discrimination contained in the complaint are being litigated may be substituted for the DFEH-600-09A.

**07 RESOLVED BY PARTIES**

The complainant and respondent reach agreement without active DFEH involvement in the negotiations.

Closing Procedures:

- 1) A written confirmation signed by the complainant which includes DFEH and EEOC case numbers or a completed "Confirmation of Resolution by Parties (DFEH-200-10) is required. A 14-day letter from the consultant can be substituted when written confirmation is difficult to obtain.
- 2) The case may be closed immediately upon receipt of written notification from the complainant that the case has been resolved.

**08 CONSENT DECREE**

The complainant is covered by a court ordered consent decree or the respondent action complained of is required or approved by a consent decree.

Closing Procedures:

- 1) A pre-closure letter to the complainant, approved by the District Administrator, which contains a brief explanation of the

recommendation for closure is required.

- 2) The case will remain open for 14 days from the date of the letter to allow for a response by the complainant.

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| <b>09</b> | <b>RESPONDENT BANKRUPT</b> | No remedy is available because the respondent has declared bankruptcy. |
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Closing Procedures:

- 1) A pre-closure letter to the complainant, approved by the District Administrator, which contains a brief explanation of the recommendation for closure is required.
- 2) The case will remain open for 14 days from the date of the letter to allow for a response by the complainant.

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| <b>10</b> | <b>RESPONDENT UNAVAILABLE</b> | Exhaustive attempts to contact the respondent have failed. |
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Closing Procedures:

- 1) A pre-closure letter to the complainant, approved by the District Administrator, containing a brief explanation of the recommendation for closure is required.
- 2) The case will remain open for 14 days from the date of the letter to allow for a response by the complainant.

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| <b>11</b> | <b>PROCESSING WAIVED TO ANOTHER AGENCY</b> | DFEH determines that it will not process the complaint pursuant to the terms of a worksharing agreement, a written request by EEOC, a statutory or judicial requirement, or a determination by a Regional Administrator that a waiver is the most appropriate disposition. |
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Closing Procedures:

- 1) A pre-closure letter to the complainant, approved by the District Administrator, containing a brief explanation of the recommendation for closure is required.
- 2) A copy of DFEH-100-07 must be given to the complainant prior to case closure in those instances where the waiver to EEOC is

based on the Mohasco decision. (Refer to Directive 212, "Complaints Affected by the Mohasco Decision.")

- 3) The case may be closed as soon as the pre-closure letter is mailed.

**12 DETERMINATION OF ANOTHER AGENCY RECOGNIZED**

Pursuant to a worksharing agreement and/or the review of another agency's investigative report, DFEH determines that further processing is not warranted.

Closing Procedures:

- 1) A pre-closure letter to the complainant, approved by the District Administrator, containing a brief explanation of the recommendation for closure is required.
- 2) The case may be closed as soon as the pre-closure letter is mailed.
- 3) If the case was investigated by EEOC, send a modified closing letter stating that complainant has one year from the date of the closing letter (DFEH-200-02) sent by EEOC on DFEH's behalf or one year from the date of the closure of the EEOC claim, whichever is greater. Attach a copy of the letter sent to complainant from EEOC.

**13 NO DETERMINATION POSSIBLE WITHIN ONE YEAR**

The investigation cannot be completed prior to the deadline for the issuance of an accusation. (For use only in **extraordinary** circumstances.)

Closing Procedures:

- 1) An investigative report, written in accordance with case analysis principles, must be prepared by the assigned consultant. The investigative report will identify under each relevant question any areas/allegations requiring further investigation (refer to Directive 312, "Progress Reports.")
- 2) A case **may not** be closed with this closing category without the prior approval of the Regional Administrator. (Refer to Directive 313, "Cases Not Completed Within the Statutory Time Limit," for the procedures for closing employment cases that are not completed within the statutory time limit.)

- 3) A pre-closure letter to the complainant, approved by the District Administrator, which contains a brief explanation of the recommendation for closure is required.
- 4) The case may be closed as soon as the pre-closure letter is mailed.
- 5) For dual filed cases, the District Administrator will prepare a letter to EEOC's State and Local Coordinator requesting further investigation. The letter will contain a summary of the analysis of the case and additional investigative work required. In those instances where substantial work has been completed, the letter may request that contract credit be given. This letter, along with the case file, will be forwarded to EEOC. A copy of the letter and a copy of the case file should be retained by DFEH.



- 14     **ADMINISTRATIVE  
DISMISSAL**     The case is dismissed by exercise of the discretion vested in the Department by the FEHA, Ralph or Unruh.

Closing Procedures:

- 1)     A case **may not** be closed with this closure category without the prior approval of the Regional Administrator.
- 2)     A pre-closure letter to the complainant, approved by the District Administrator, which contains a brief explanation of the recommendation for closure is required.
- 3)     The case may be closed as soon as the pre-closure letter is mailed.

- 15     **NO REMEDY AVAILABLE**     No monetary, employment, or service remedy is available.

Closing Procedures:

- 1)     A pre-closure letter to the complainant, approved by the District Administrator, containing a brief explanation of the recommendation for closure is required.
- 2)     The case will remain open for 14 days from the date of the letter to allow for a response by the complainant.

- 16     **NEGOTIATED  
SETTLEMENT/FIELD  
RESOLUTION**     Prior to a formal conciliation conference, a settlement agreement which is acceptable to all parties is negotiated by DFEH.

Closing Procedures:

A DFEH-500-02 must be signed by all parties prior to the closure of the case. The use of any other agreement or modifications to the language of the DFEH-500-02 *must have the prior approval* of the District Administrator and the assigned attorney.

- 17     **REMEDY REFUSED BY  
COMPLAINANT**     An offer made by the respondent prior to a formal conciliation is found to be equitable by DFEH based upon available evidence, but is refused by the complainant.

Closing Procedures:

- 1) The District Administrator will consult the assigned attorney regarding the adequacy of the offer prior to the closure of the case.
- 2) The assigned consultant will prepare a memorandum to the file which summarizes the evidence and the reasons for not continuing to hearing.
- 3) A pre-closure letter to the complainant, approved by the District Administrator, which contains a brief explanation of the recommendation for closure and a restatement of respondent's offer is required.
- 4) The case will remain open for 30 days from the date of the letter to allow for a response by the complainant.

**18 UNSUCCESSFUL  
CONCILIATION**

An offer made by the respondent during or after formal conciliation is found by DFEH to be equitable based upon available evidence, but is refused by the complainant. May also include cases more than one year old where conciliation has failed. (Refer to Directive 313, "Case Not Completed Within the Statutory Time Limit.")

Closing Procedures:

- 1) A memorandum for the file will be prepared by the assigned consultant summarizing the evidence and the reasons for not continuing to hearing.
- 2) A pre-closure letter to the complainant, approved by the District Administrator, which contains a brief explanation of the recommendation for closure and a restatement of the respondent's offer is required.
- 3) The case will remain open for 30 days from the date of the letter to allow for a response by the complainant.

**19      SUCCESSFUL  
CONCILIATION**

DFEH has negotiated a settlement agreement which is acceptable to all the parties, during or following formal conciliation, based on a violation of the FEHA, Ralph or Unruh.

Closing Procedures:

A DFEH-500-02 must be signed by all parties prior to the closure of the case. The use of any other agreement or modifications in the language of the DFEH-500-02 *must have the prior approval* of the District Administrator and the assigned attorney.

**20      NO PROBABLE CAUSE TO  
PROVE A VIOLATION OF  
THE STATUTE**

A comprehensive investigation fails to produce sufficient evidence to show probable cause that the FEHA, Ralph or Unruh has been violated.

Closing Procedures:

- 1) The assigned consultant will complete an Investigative Work Plan (IWP) which clearly identifies all of the evidence that was considered for each relevant question in making the final recommendation for the closure of the case. All evidence that substantiates the basis for closure will be tabbed as exhibits in the file.
- 2) A pre-closure letter to the complainant (DFEH-200-12 or DFEH-200-14/DFEH-200-14S) will be prepared explaining why the case is being recommended for closure. Information provided in the letter must clearly demonstrate that all allegations in the complaint and all issues set forth in case analysis have been addressed.
- 3) The letter must be approved by the District Administrator prior to being mailed. The District Administrator will initial the file copy of the letter in the top right-hand corner signifying approval of the investigation and the letter, and note his/her review and approval on the Case Diary. The letter will be signed by the consultant.
- 4) The case will remain open for 14 days from the date of the letter to allow for a response by the complainant.

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| <b>21</b> | <b>SPECIFIC COMPLAINT NOT SUSTAINED; OTHER INEQUITIES REMEDIED</b> | The case is otherwise appropriate for Closing Category 01, 02, 03, 04, 05, 06, 07, 14, 17, 18, or 20, but the respondent agrees to a settlement correcting improper practices identified during the investigation. |
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Closing Procedures:

A DFEH-500-03 must be signed by the respondent and a DFEH representative prior to the closure of the case. Any modifications to the language of the DFEH-500-03 *must have prior approval* of the District Administrator and the assigned attorney.

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| <b>22</b> | <b>ACCUSATION WITHDRAWN; SETTLEMENT SIGNED</b> | The case is settled after an accusation is issued. |
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Closing Procedures:

- 1) A signed DFEH-500-02 or other settlement agreement signed between the parties, with or without DFEH as a signatory, is required and DFEH is satisfied that all of the violations of the FEHA, Ralph or Unruh have been appropriately remedied.
- 2) Subsequent to the signing of the settlement agreement, the Legal Division will withdraw the accusation.

**23      ACCUSATION WITHDRAWN;  
NO PROBABLE CAUSE**

After an accusation is issued, the Legal Division determines that no probable cause exists to prove a violation of the FEHA, Ralph or Unruh.

Closing Procedures:

- 1)      The assigned attorney has determined that no probable cause exists to prove a violation of the FEHA, Ralph or Unruh and has obtained the concurrence of the Chief Counsel.
- 2)      The assigned attorney will mail a pre-closure letter to the complainant explaining why a determination of "no probable cause" has been made. It is not necessary to wait for a response from the complainant.
- 3)      Subsequent to mailing the "no probable cause" letter to complainant, the Legal Division will withdraw the accusation.

**24      ACCUSATION WITHDRAWN;  
REMEDY REFUSED BY  
COMPLAINANT**

An offer viewed as equitable by DFEH has been refused by the complainant.

Closing Procedures:

- 1)      The assigned attorney, with the concurrence of the Chief Counsel, will determine whether a settlement offer made by the respondent is equitable.
- 2)      The assigned attorney will mail a pre-closure letter to the complainant which briefly explains the recommendation for closure. It is not necessary to wait for a response.
- 3)      Subsequent to mailing the pre-closure letter to the complainant, the Legal Division will withdraw the accusation.

**25      ACCUSATION WITHDRAWN;  
COMPLAINANT ELECTED  
COURT ACTION**

The complainant withdraws from the administrative process in order to file a private lawsuit.

Closing Procedures:

- 1) A "Request for Authorization to File a Lawsuit" (DFEH-600-09A [non-dual filed cases] or DFEH-600-09B [dual filed cases]) will be completed and signed by the complainant. A written request signed by the complainant which includes the DFEH and EEOC case numbers may be substituted.
- 2) Subsequent to the receipt of the complainant's withdrawal request, the Legal Division will withdraw the accusation.
- 3) *For non-dual filed cases*, a copy of the legal documents that demonstrates that the allegations of discrimination contained in the complaint are being litigated may be substituted for the DFEH-600-09A.

**26      ACCUSATION WITHDRAWN;  
ADMINISTRATIVE  
DISMISSAL**

The Department determines not to proceed by exercise of the discretion vested by the FEHA.

Closing Procedures:

- 1) The assigned attorney will withdraw the accusation with the concurrence of the Chief Counsel.
- 2) A pre-closure letter to the complainant containing a brief explanation of the recommendation for closure is required.
- 3) Subsequent to mailing the pre-closure letter, the Legal Division will withdraw the accusation.

**27 ACCUSATION WITHDRAWN;  
COMPLAINANT WITHDRAWS  
WITHOUT SETTLEMENT**

After an accusation is issued, the complainant withdraws the complaint prior to a resolution.

Closing Procedures:

- 1) A "Request to Discontinue Investigation of Complaint" (DFEH-600-06A [non-dual filed cases] or DFEH-600-06B [dual filed cases]) will be completed and signed by the complainant. A written request signed by the complainant which includes the DFEH and EEOC case numbers may be substituted.
- 2) Subsequent to the receipt of the complainant's withdrawal request, the Legal Division will withdraw the accusation.

**28 ACCUSATION WITHDRAWN:  
PROSECUTION RESTRAINED**

After an accusation is issued, the Legal Division determines that no further action is warranted due to, but not limited to, the following:  
1) complainant unavailable,  
2) complainant fails to cooperate,  
3) respondent files for bankruptcy protection, 4) determination of another agency recognized.

Closing Procedures:

Approval by the Chief Counsel must be obtained prior to using this category.

- 1) Complainant Unavailable – Assigned attorney will document attempts to contact the complainant by telephone and written correspondence (via certified and regular mail).
- 2) Complainant Fails to Cooperate – Following repeated attempts to obtain the cooperation of the complainant, the assigned attorney determines that prosecution of the case would be impractical. Attorney must prepare a memo documenting action by complainant (i.e., not returning telephone calls, not providing witness information, release of medical or personnel record, etc.)
- 3) Respondent Files for Protection in U.S. Bankruptcy Court – Attorney must obtain a copy of the proof of filing and stay from the U.S. Bankruptcy Court. The attorney will assess whether it would be appropriate to seek relief from the stay. If not, the attorney will send a letter to the complainant with an

explanation that no remedy is available due to the pending bankruptcy and the accusation will be withdrawn. Also, the complainant should be informed that they may file a proof of claim with the U.S. Bankruptcy Court and should also seek private legal advice.

- 4) Determination of Another Agency Recognized (DPA/SPB/Civil Service Commission) – Assigned attorney will send a letter to the complainant with an explanation that, based upon findings of another agency, court or tribunal concerning the same issues as contained within the accusation, the Department will withdraw its accusation. A copy of the decision from the other agency must be obtained prior to withdrawal of the accusation.

**29 ACCUSATION NOT ISSUED**

A thoroughly investigated case is referred to the Legal Division for issuance of an accusation. Upon review, the Legal Division determines not to issue an accusation. Where the Chief Counsel determines that a case was not appropriately referred to the Legal Division (i.e., due to an inadequate investigation), this closing category will not apply.

Closing Procedures:

- 1) The assigned attorney will draft and mail a pre-closure letter to the complainant. A copy of the letter will be placed in the file and the file will be returned to the District Office for closure by the District Office before the anniversary date.
- 2) The case will be closed by the District Office before the anniversary date.

**30 PUBLIC HEARING HELD; NO APPEAL FILED**

A final Commission order is issued and none of the parties appeal the order.

(Refer to closure procedures provided below.)



- 31     **PUBLIC HEARING HELD;  
APPEAL FILED;  
COMMISSION ORDER  
UPHELD**     Following public hearing, the Commission's order is appealed. Upon completion of the appeal process, the Commission's order is upheld.

(Refer to closure procedures provided below.)

- 32     **PUBLIC HEARING HELD;  
APPEAL FILED;  
COMMISSION ORDER  
OVERTURNED**     Following public hearing, the Commission's order is appealed. Upon completion of the appeal process, the Commission's order is overturned.

(Refer to closure procedures provided below.)

- 33     **PUBLIC HEARING HELD;  
SETTLEMENT SIGNED**     Commission hearing held, settlement agreement signed after hearing, but prior to a Commission order.

(Refer to closure procedures provided below.)

- 34     **PUBLIC HEARING HELD;  
APPEAL FILED;  
SETTLEMENT SIGNED**     Following public hearing, the Commission's order is appealed. Settlement agreement signed prior to a court ruling.

(Refer to closure procedures provided below.)

- 35     **PUBLIC HEARING HELD;  
APPEAL FILED;  
COMMISSION ORDER  
MODIFIED**     Following public hearing, the Commission's order is appealed. Upon completion of the appeal process, the Commission's order is modified.

Closing Procedures (Closing Categories 30, 31, 32, 33, 34, and 35):

- 1)     A public hearing has been held. The Fair Employment and Housing Commission has issued a decision or a settlement was reached prior to the issuance of a decision.
- 2)     The Legal Division will ensure that all closing documents are in the case file prior to its return to the District Office.

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| 40 | <b>AN ADMINISTRATIVE<br/>DECISION</b> | Exclusively for use on employment complaints accepted for "Filing Purposes Only." ( <b>NOTE:</b> This Closing Category is <u>not</u> to be used for Unruh or Ralph complaints.) |
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Closing Procedures:

- 1) The assigned consultant will explain to the complainant the reasons the case is being rejected for investigation. Such will be noted on the back of the Pre-Complaint Questionnaire. In spite of that discussion, the complainant stated a continued desire to file the complaint.
- 2) The decision *must have the approval* of the District Administrator who will initial and date the front of the Pre-Complaint Questionnaire.
- 3) The consultant will draft a short complaint using DFEH-300-04, which will be signed by the complainant.
- 4) A copy of DFEH-100-10 will be given to the complainant and a copy retained for the file. The case *will not* be dual filed with EEOC.
- 5) The case will be opened, served, and closed immediately thereafter.

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| 50 | <b>TRANSFERRED TO COURT;<br/>PRE-TRIAL SETTLEMENT</b> | Accusation is withdrawn after the respondent elects to transfer the case to court. A civil complaint was filed in Superior Court and the parties sign a settlement agreement prior to trial. |
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(Refer to closure procedures provided below.)

**51 TRANSFERRED TO COURT;  
CASE DISMISSED**

Accusation is withdrawn after the respondent elects to transfer the case to court. A civil complaint was filed in Superior Court and (1) complainant decides not to proceed, (2) complainant missing or unavailable, (3) case cannot be sustained after further discovery, (4) complainant fails to cooperate, (5) respondent bankrupt, (6) reasonable remedy refused by complainant or (7) determination of another agency recognized.

Closing Procedures:

Approval by the Chief Counsel must be obtained prior to using this category.

- 1) Complainant Decides not to Proceed – Complainant informs attorney that he/she does not want the Department to litigate case and submits proper form.
  - a) Request to Discontinue Investigation of Complaint – DFEH-600-06A.
  - b) Request to Discontinue Investigation of Complaint – Employment (used for all cases dual-filed with EEOC) – DFEH-600-06B.
  - c) Request for Authorization to File a Lawsuit – DFEH-600-09A.
  - d) Request for Authorization to File a Lawsuit – Employment (used for all cases dual-filed with EEOC) – DFEH-600-09B.
- 2) Complainant Missing/Unavailable – Assigned attorney will document attempts to contact the complainant by telephone and written correspondence (via certified and regular mail).
- 3) Case Cannot Be Sustained After Further Discovery – As a result of information obtained through civil discovery, the assigned attorney determines that the allegations contained within the civil complaint cannot be sustained. The attorney will prepare a memorandum detailing the facts of the case and the reason for recommending dismissal.
- 4) Complainant Fails to Cooperate – Following repeated attempts to obtain the cooperation of the complainant, the assigned attorney determines that prosecution of the case would be

impractical. Attorney must prepare a memo documenting action by complainant (i.e., not returning telephone calls, not providing witness information, release of medical or personnel record, etc.).

- 5) Respondent Files for Protection in U.S. Bankruptcy Court - Assigned attorney must obtain a copy of the proof of filing and stay from the U.S. Bankruptcy Court. The attorney will assess whether it would be appropriate to seek relief from the stay. If not, the attorney will send a letter to the complainant with an explanation that no remedy is available due to the pending bankruptcy and the civil complaint will be dismissed. Also, the complainant should be informed that he/she may file a proof of claim with the U.S. Bankruptcy Court and should also seek private legal advice.
- 6) Remedy Refused by Complainant
  - a) The assigned attorney, with the concurrence of the Chief Counsel, will determine whether a settlement offer made by the respondent is equitable.
  - b) The assigned attorney will mail a pre-closure letter to the complainant which briefly explains the recommendation for closure. It is not necessary to wait for a response.
  - c) Subsequent to mailing the pre-closure letter to the complainant, the Legal Division will dismiss the civil complaint.
- 7) Determination of Another Agency Recognized - (DPA/SPB/Civil Service Commission) – Attorney will send a letter to the complainant with an explanation that, based upon findings of another agency, court or tribunal concerning the same issues as contained within the civil complaint, the Department will dismiss the complaint. A copy of the decision from the other agency must be obtained prior to dismissal of the complaint.

**52 TRANSFERRED TO COURT;  
POST-TRIAL SETTLEMENT**

Accusation is withdrawn after the respondent elects to transfer the case to court. A civil complaint was filed in Superior Court. After trial, the parties sign a settlement agreement before a verdict is issued.

(Refer to closure procedures provided below.)

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| <b>53</b> | <b>TRANSFERRED TO COURT;<br/>FINAL TRIAL COURT<br/>DECISION</b> | Accusation is withdrawn after the respondent elects to transfer the case to court. A civil complaint was filed in Superior Court and the trial court renders a decision and neither party appeals. |
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(Refer to closure procedures provided below.)

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| <b>54</b> | <b>TRANSFERRED TO COURT;<br/>FINAL APPELLATE COURT<br/>DECISION</b> | Accusation is withdrawn after the respondent elects to transfer the case to court. A civil complaint was filed in Superior Court and the trial court decision is appealed and is final. |
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Closing Procedures (Closing Categories 50, 51, 52, 53, and 54):

- 1) After an accusation is issued, a case is transferred to court.
- 2) The Legal Division will ensure that all closing documents are in the case file prior to its return to the District Office.

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| <b>60</b> | <b>SUCCESSFUL MEDIATION</b> | An agreement, to which the Department is not a party, was reached between the complainant and respondent. |
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Upon receipt of Transmittal to Mediation Unit (DFEH 900-56) from the Mediation Unit documenting that the case has been successfully mediated, the case will immediately be closed under the name of the District Administrator.

**B. Selection of a Closing Category:**

- 1) The District Office investigating the case will be responsible for determining the appropriate closing category when the case is closed prior to the issuance of an accusation.
  - a) Where unique situations arise that are not covered by an established closing category, the District Administrator will consult the Regional Administrator.

- b) If an accusation has been recommended by the District Office **BUT NOT ISSUED**, a closing category will be suggested by the assigned attorney.
- 2) The Legal Division will determine the closing category on cases where an accusation has been issued.
  - a) The assigned attorney will issue any required pre-closure letter to the complainant.
  - b) The case file will be returned to the assigned District Office for closure.

**C. Response to Pre-Closure Letters:**

- 1) The complainant's written and verbal responses to pre-closure letters will be noted in the case file with an explanation as to why any new information submitted does not alter the closure decision.
- 2) The complainant's written and oral responses will be acknowledged in writing. Copies of all such correspondence will be retained in the case file.

**D. Closing the Case:**

- 1) The District Administrator is responsible for the decision to formally close the case.
- 2) When the District Administrator has approved a case for closure, the following must occur:
  - a) The final closure letter will be sent to the complainant with a copy to the respondent(s).
  - b) If the complaint was dual-filed with EEOC, a copy of the closing letter, the final investigative report, and any other required documents will be immediately forwarded to EEOC (refer to Chapter 10, "Procedures for Closing Cases," and Chapter 13, "Monthly Report," of the Enforcement Division's Clerical Case Processing Manual).

**E. Rescinded Complaints:**

Occasionally, after filing a complaint, a complainant decides not to proceed and requests that the respondent not be notified that the charge has been filed. Such requests are to be honored IF THE COMPLAINT HAS NOT BEEN SERVED. These complaints are to be rescinded, rather than closed.

Procedures for Rescinded Complaints Prior to Service:

- 1) The complainant will sign a "Request to Rescind Complaint" (DFEH-600-32).
- 2) The signed form will be attached to all of the paperwork, including the rescinded complaint form.
- 3) The entire package should be filed in the "PCQ - Complaints Not Taken" file.
- 4) The DFEH case number and EEOC charge number, if applicable, will be deleted from the CMIS system and lined out in the case registers. Rescinded complaint numbers will not be reassigned.
- 5) Where the case was already sent for dual filing with EEOC, the EEOC State and Local Coordinator will be contacted by telephone with a request to stop the processing. The District Office will forward a copy of the "Request to Rescind" form to EEOC.

5. **APPROVAL:**

\_\_\_\_\_  
Suzanne M. Ambrose, Director

\_\_\_\_\_  
Date